IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

State of Raj. Vs. Durgalal
S.B.CR.LEAVE TO APPEAL NO.252/2006

Against judgment dated 19.06.2006 passed by learned Special Judge, SC/ST (Prevention of Atrocities Act), Udaipur in Special Sessions Case No.34/04 (State Vs. Durgalal)

DATE OF ORDER : : 31st August, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Vishnu Kachhawaha, Public Prosecutor.

BY THE COURT:

This criminal leave to appeal under Section 378(iii) & (i) Cr.P.C. has been filed by the State against the judgment dated 19.06.2006 passed by learned Special Judge, SC/ST (Prevention of Atrocities Act), Udaipur in Sessions Case No.34/04 (State Vs. Durgalal) whereby the accused respondent has been acquitted of the offence under Section 366, 343, and 368 IPC.

Necessary facts for disposal of the Criminal Leave to Appeal are that Miss Champa D/o Shankerlal Meena, resident of Bamaniya Pal TD, Udaipur submitted a written report at Mahila Thana Udaipur on 06.05.2001 with the averments that 6-7 days before she had come to Udaipur with her parents to fetch some work (as a labourer) and was standing at Reti Bus-stand at about 8.00 AM, one woman labourer was also standing there. At that time, a car came there, in which two persons were sitting along with driver. The persons sitting in the car told her that they require two women to do some work and on that pretext they took her with them and while she was in the car, her mouth was tied with the cloth. It was further alleged that she was kept for two days at some place and thereafter on the third day she was taken to some house in a village and was forced to marry the accused Hoshiyar Singh.

On the above report, police registered a case No.12/01 under Section 366, 366A, 363, 365, 376, 343 and 120B IPC. After completion of investigation, charge-sheet was filed against some of the accused persons and after trial

Lakharam, Hoishiyar, Ramkumar, Banalal and Pratap were acquitted vide judgment dated 24.01.2004. Since, the accused respondent was absconding, therefore, subsequently charge-sheet was filed in the matter.

After hearing both the sides, learned trial court framed charge against accused respondent Durga Lal under Sections 366, 343 and 368 IPC. The accused denied the charge and claimed trial. In support of its case, prosecution examined 12 witnesses and produced some documentary evidence. After close of the prosecution evidence, in the statement recorded under Section 313 Cr.P.C., the accused respondent denied the prosecution case and claimed to be innocent. In defence, no witness was examined. The learned trial court after hearing learned counsel for the parties vide its judgment dated 19.06.2006 in Special Sessions Case No.34/04 acquitted accused-respondent of the charge framed against him . Hence, the present criminal leave to appeal has been filed.

Heard learned Public Prosecutor and carefully gone through the material available on record.

The contention of learned Public Prosecutor is that in view of statement of PW2 Champa it is amply proved that she was forcibly taken by the accused respondent. He submits that the learned trial court has not properly appreciated the evidence available on record, therefore, the order of acquittal requires to be set aside.

I have carefully considered the submissions made before me and perused the impugned judgment and the reasons given in the judgment of acquittal.

In the present case, at the initial trial the main accused, against whom allegations are of rape, have already been acquitted by judgment dated 24.01.2004 and against present accused and one Chaganlal who were absconding subsequently arrested. Later on charge-sheet was filed against them and the learned trial court found the statement of PW2 prosecutrix not reliable for the reason that in her examination-in-chief she completely denied that the accused person forcibly took her. The statement of this witness was also found shaky. The learned trial court further found that she did not say

anything about the accused respondent.

The position of law is also settled on the point that the Court while considering the matter where appeals are filed against the order of acquittal then, as a matter of routine interference is not required to be made unless it is found that findings are perverse or the trial Court has misread the evidence.

In view of foregoing discussion, I do not find any illegality in the impugned judgment passed by the learned trial court after appreciating the entire evidence available on record. Hence, the leave to appeal is required to be rejected. Accordingly, the leave to appeal is rejected.

(SATYA PRAKASH PATHAK), J.

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